

AMENDED IN ASSEMBLY MAY 10, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

AMENDED IN ASSEMBLY MARCH 25, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2685

Introduced by Assembly Member De La Torre

February 19, 2010

~~An act to add Section 47610.2 to the Education Code, relating to charter schools. An act to amend Section 44237 of the Education Code, relating to teacher credentialing.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2685, as amended, De La Torre. Charter schools: criminal background of employees and volunteers.

Existing law authorizes the Commission on Teacher Credentialing to issue teaching credentials and services credentials. Existing law defines "adverse action" as the denial of an application for a credential, a private admonition or a public reproof of a credentialholder, or the suspension or revocation of a credential. Existing law requires the commission to send, on a monthly basis, to each private school a list of all teachers who have had their state teaching credential revoked or suspended.

This bill would require the commission instead to make available to each private school a listing of all credentialholders who have had final adverse action taken against their credential.

~~Existing law permits the governing board of a school district to authorize any person, except a person required to register as a sex offender, to serve as a nonteaching volunteer aide, as defined, and to~~

~~perform certain duties that include supervising pupils. Existing law authorizes certain local educational agencies and private schools to request a local law enforcement agency to conduct a records check of a prospective nonteaching volunteer aid to ascertain whether the person has been convicted of a sex offense, and further authorizes those entities to request subsequent arrest notification service from the Department of Justice for prospective volunteers, as specified.~~

~~Existing law prohibits the governing board of a school district from employing persons in public school service who have been convicted of specified sex offenses or controlled substance offenses, and further prohibits a person who has been convicted of a violent or serious felony, as defined, from being employed by a school district, except as specified.~~

~~Existing law requires the governing board of a school district to comply with specified requirements relating to the criminal histories and records of employees and applicants for employment, including transmitting an applicant's fingerprint cards to the Department of Justice to ascertain whether the applicant has been arrested or convicted of any crime. Existing law, on and after July 1, 2010, requires all noncertificated candidates for a paid or volunteer position to supervise, direct, or coach a pupil activity program sponsored by or affiliated with a school district to obtain an Activity Supervisor Clearance Certificate from the Commission on Teacher Credentialing.~~

~~This bill would require a charter school to comply with all of those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 44237 of the Education Code is amended
2 to read:
3 44237. (a) Every person, firm, association, partnership, or
4 corporation offering or conducting private school instruction on
5 the elementary or high school level shall require each applicant
6 for employment in a position requiring contact with minor pupils
7 who does not possess a valid credential issued by the ~~Commission~~
8 ~~on Teacher Credentialing~~ *commission* or is not currently licensed
9 by another state agency that requires a criminal record summary
10 that directly relates to services provided in a facility described in
11 this section and has background clearance criteria that meets or

1 exceeds the requirements of this section, to submit two sets of
2 fingerprints prepared for submittal by the employer to the
3 Department of Justice for the purpose of obtaining criminal record
4 summary information from the Department of Justice and the
5 Federal Bureau of Investigation.

6 (b) (1) As used in this section, “employer” means every person,
7 firm, association, partnership, or corporation offering or conducting
8 private school instruction on the elementary or high school level.

9 (2) As use in this section, “employment” means the act of
10 engaging the services of a person, who will have contact with
11 pupils, to work in a position at a private school at the elementary
12 or high school level on or after September 30, 1997, on a regular,
13 paid full-time basis, regular, paid part-time basis or paid full- or
14 part-time seasonal basis.

15 (3) As used in this section, “applicant” means any person who
16 is seriously being considered for employment by an employer.

17 (4) This section does not apply to a secondary school pupil
18 working at the school he or she attends or a parent or legal guardian
19 working exclusively with his or her children.

20 (c) (1) Upon receiving the identification cards, the Department
21 of Justice shall ascertain whether the applicant has been arrested
22 or convicted of any crime insofar as that fact can be ascertained
23 from information available to the department and forward the
24 information to the employer submitting the fingerprints no more
25 than 15 working days after receiving the identification cards. The
26 Department of Justice shall not forward information regarding
27 criminal proceedings that did not result in a conviction but shall
28 forward information on arrests pending adjudication.

29 (2) Upon implementation of an electronic fingerprinting system
30 with terminals located statewide and managed by the Department
31 of Justice, the Department of Justice shall ascertain the information
32 required pursuant to this subdivision within three working days.
33 If the Department of Justice cannot ascertain the information
34 required pursuant to this subdivision within three working days,
35 the department shall notify the employer submitting the fingerprints
36 that it cannot so ascertain the required information. This
37 notification shall be delivered by telephone or electronic mail to
38 the employer submitting the fingerprints. If the employer
39 submitting the fingerprints is notified by the Department of Justice
40 that it cannot ascertain the required information about a person,

1 the employer may not employ that person until the Department of
2 Justice ascertains that information.

3 (3) The Department of Justice shall review the criminal record
4 summary it obtains from the Federal Bureau of Investigation to
5 ascertain whether an applicant for employment has a conviction,
6 or an arrest pending final adjudication, for any sex offense,
7 controlled substance offense, crime of violence, or serious or
8 violent felony. The Department of Justice shall provide written
9 notification to the private school employer only as to whether an
10 applicant for employment has any convictions, or arrests pending
11 final adjudication, for any of these crimes.

12 (d) An employer shall not employ a person until the Department
13 of Justice completes its check of the state criminal history file as
14 set forth in this section.

15 (e) (1) ~~A person, firm, association, partnership, or corporation~~
16 ~~offering or conducting private school instruction on the elementary~~
17 ~~or high school level.~~ An employer shall not employ a person who
18 has been convicted of a violent or serious felony or a person who
19 would be prohibited from employment by a public school district
20 pursuant to any provision of this code because of his or her
21 conviction for any crime.

22 (2) A person who would be prohibited from employment by a
23 private school pursuant to paragraph (1) may not, on or after July
24 1, 1999, own or operate a private school offering instruction on
25 the elementary or high school level.

26 (f) An employer shall request subsequent arrest service from
27 the Department of Justice as provided under Section 11105.2 of
28 the Penal Code.

29 (g) This section applies to any violent or serious offense which,
30 if committed in this state, would have been punishable as a violent
31 or serious felony.

32 (h) For purposes of this section, a violent felony is any felony
33 listed in subdivision (c) of Section 667.5 of the Penal Code and a
34 serious felony is any felony listed in subdivision (c) of Section
35 1192.7 of the Penal Code.

36 (i) Notwithstanding subdivision (e), a person shall not be denied
37 employment or terminated from employment solely on the basis
38 that the person has been convicted of a violent or serious felony
39 if the person has obtained a certificate of rehabilitation and pardon

1 pursuant to Chapter 3.5 (commencing with Section 4852.01) of
2 Title 6 of Part 3 of the Penal Code.

3 (j) Notwithstanding subdivision (e), a person shall not be denied
4 employment or terminated from employment solely on the basis
5 that the person has been convicted of a serious felony that is not
6 also a violent felony if that person can prove to the sentencing
7 court of the offense in question, by clear and convincing evidence,
8 that he or she has been rehabilitated for the purposes of school
9 employment for at least one year. If the offense in question
10 occurred outside this state, then the person may seek a finding of
11 rehabilitation from the court in the county in which he or she is a
12 resident.

13 ~~(k) The Commission on Teacher Credentialing shall send on a~~
14 ~~monthly basis to each private school a list of all teachers who have~~
15 ~~had their state teaching credential revoked or suspended. The list~~
16 ~~shall be identical to the list compiled for~~ *The commission shall*
17 *make available to each private school a listing of all*
18 *credentialholders who have had final adverse action taken against*
19 *their credential. The information shall be identical to that made*
20 *available to public schools in the state. The commission shall also*
21 *send on a quarterly basis a complete and updated list of all teachers*
22 *who have had their teaching credentials revoked or suspended,*
23 *excluding teachers who have had their credentials reinstated, or*
24 *who are deceased.*

25 (l) The Department of Justice may charge a reasonable fee to
26 cover costs associated with the processing, reviewing, and
27 supplying of the criminal record summary as required by this
28 section. In no event shall the fee exceed the actual costs incurred
29 by the department.

30 (m) Where reasonable access to the statewide, electronic
31 fingerprinting network is available, the Department of Justice may
32 mandate electronic submission of the fingerprints and related
33 information required by this section.

34 (n) All information obtained from the Department of Justice is
35 confidential. Agencies handling Department of Justice information
36 shall ensure the following:

37 (1) No recipient shall disclose its contents or provide copies of
38 information.

1 (2) Information received shall be stored in a locked file separate
2 from other files, and shall only be accessible to the custodian of
3 records.

4 (3) Information received shall be destroyed upon the hiring
5 determination in accordance with subdivision (a) of Section 708
6 of Title 11 of the California Code of Regulations.

7 (4) Compliance with destruction, storage, dissemination,
8 auditing, backgrounding, and training requirements as set forth in
9 Sections 700 through 708, inclusive, of Title 11 of the California
10 Code of Regulations and Section 11077 of Penal Code governing
11 the use and security of criminal offender record information is the
12 responsibility of the entity receiving the information from the
13 Department of Justice.

14 ~~SECTION 1. Section 47610.2 is added to the Education Code,~~
15 ~~to read:~~

16 ~~47610.2. (a) Notwithstanding any other provision of law, a~~
17 ~~charter school shall comply with Sections 35021, 35021.1, 35021.2,~~
18 ~~44836, 45122.1, 45125, and 49024.~~

19 ~~(b) A person who is required to complete a background check~~
20 ~~pursuant to subdivision (a) at the time the statute enacting this~~
21 ~~section takes effect shall complete the background check within~~
22 ~~90 days from the date on which this section takes effect.~~